

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

AMERINATIONAL COMMUNITY SERVICES, LLC,
as Servicer for the GDB Debt Recovery Authority, and
CANTOR-KATZ COLLATERAL MONITOR LLC,

Movants,

v.

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,
as representative of

THE COMMONWEALTH OF PUERTO RICO,

Respondent.

PROMESA Title III

Case No. 17 BK 3283-LTS

(Jointly Administered)

Re: ECF No. 17009

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

To the Honorable United States District Court Judge Laura Taylor Swain:

Pursuant to the *Order Scheduling Briefing of Evidentiary Objection to the Expert Report of Lizette Martinez Attached as Exhibit A to the DRA Parties' Reply to the Objection to the DRA Parties' Motion for Allowance of Administrative Expense Claim* dated September 29, 2021 [ECF No. 18298], the Commonwealth of Puerto Rico (the “Commonwealth” or the “Debtor”), by and through the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), as the Debtor’s sole Title III representative pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”)², respectfully submits this reply (i) in support of the *Evidentiary Objection to the Expert Report of Lizette Martinez Attached as Exhibit A to the DRA Parties' Reply to the Objection to the DRA Parties' Motion for Allowance of Administrative Expense Claim* dated September 28, 2021 [ECF No. 18270] (the “Evidentiary Objection”), and (ii) in reply to the *DRA Parties' Response to Evidentiary Objection to the Expert Report of Lizette Martinez Attached as Exhibit A to the DRA Parties' Reply to the Objection to the DRA Parties' Motion for Allowance of Administrative Expense Claim* dated October 7, 2021 [ECF No. 18429] (the “Response to Evidentiary Objection”) filed by AmeriNational Community Services, LLC, as servicer for the GDB Debt Recovery Authority, and Cantor-Katz Collateral Monitor LLC, a Delaware limited liability company (collectively, the “DRA Parties”).

1. The Evidentiary Objection objects to the *Expert Report of Lizette Martinez, CPA, CFF, CFE*, dated as of September 13, 2021 (the “Martinez Report”), attached as Exhibit A to *The DRA Parties' Reply to the Objection of Financial Oversight and Management Board for Puerto Rico to DRA Parties' Motion for Allowance of an Administrative Expense Claim* [ECF No. 18244],

² PROMESA has been codified at 48 U.S.C. §§ 2101–2241.

on three grounds. *First*, the Martinez Report’s primary, if not exclusive, focus is on the *quantification* of the DRA Parties’ claimed administrative expense, and is wholly irrelevant unless and until the Court determines the DRA Parties have an allowable administrative expense claim. *Second*, it is improper and unfair for the DRA Parties to submit evidence on an issue for the first time attached to a reply brief. *Third*, the Martinez Report not only unquestionably constitutes inadmissible hearsay, but it also is unsworn.

2. In their response to the Oversight Board’s first ground for objecting to the Martinez Report, the DRA Parties agree to the Oversight Board’s position that the Court should first determine whether the DRA Parties have an allowable administrative expense and, if so, set an evidentiary hearing to determine the amount of such claim. Response to Evidentiary Objection at ¶ 6. In light of the DRA Parties’ agreement, at this juncture the Martinez Report should be disregarded by the Court for purposes of the Court’s consideration and determination of the *DRA Parties’ Motion for Allowance of Administrative Expense Claim* [ECF No. 18244].

3. Despite the DRA Parties’ agreement to defer consideration of the admissibility of the Martinez Report until any evidentiary hearing on the quantification of their administrative expense claim, should one occur, and their “reservation of all rights and arguments” for such an evidentiary hearing,³ the DRA Parties nonetheless spend nearly three pages arguing the merits of the Evidentiary Objection. The Oversight Board disagrees with the DRA Parties’ legal arguments and believes they should be rejected, but in light of the DRA Parties’ (i) concession that the Court need not consider the Martinez Report in connection with the gating issue of whether there is a legal basis to allow an administrative expense claim, and (ii) agreement to defer the remaining

³ Response to Evidentiary Objection at n. 4.

aspects of the Evidentiary Objections to an evidentiary hearing, should one occur, the Oversight Board submits there is no reason to burden the Court with further argument on the issues. The Oversight Board reserves all rights and objections to the Martinez Report and any other evidence submitted by the DRA Parties to the time of such a hearing, if any (including the right to respond to the DRA Parties' legal arguments in the Response to Evidentiary Objection).

4. The Oversight Board also reserves the right to object to the *amended* expert report of Lizette Martinez dated October 7, 2021 (the "Amended Martinez Report") attached as Exhibit A to the Response to Evidentiary Objection. The DRA Parties' representation in paragraph 9 of the Response to Evidentiary Objection that the Amended Martinez Report is being submitted signed by Ms. Martinez under penalty of perjury to address the fact the original Martinez Report was unsworn is, at best, misleading. The Amended Expert Report does not merely add an accompanying declaration under penalty of perjury, it makes numerous material amendments and revisions to the body of the Martinez Report—*after* the Oversight Board considered the Martinez Report and filed a motion *in limine* to exclude Ms. Martinez's testimony in its entirety. *See*, ECF Nos. 18328 and 18330 in Case No. 17 BK 3283-LTS. Again, the Oversight Board reserves all rights to address such issues should an evidentiary hearing on quantification of the alleged administrative expense claim occur.

Dated: October 11, 2021
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

Martin J. Bienenstock (*pro hac vice*)

Ehud Barak (*pro hac vice*)

Jeffrey W. Levitan (*pro hac vice*)

Joshua A. Esses (*pro hac vice*)

PROSKAUER ROSE LLP

Eleven Times Square

New York, NY 10036

Tel: (212) 969-3000

Fax: (212) 969-2900

Attorneys for the Financial Oversight and Management Board as Representative for the Commonwealth

/s/ Hermann D. Bauer

Hermann D. Bauer

USDC No. 215205

O'NEILL & BORGES LLC

205 Muñoz Rivera Ave., Suite 800

San Juan, PR 00918-1813

Tel: (787) 764-1813

Fax: (787) 753-8944

Co-Attorneys for the Financial Oversight and Management Board as Representative for the Commonwealth

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer _____

Hermann D. Bauer